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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 112

AMOS REECE,

Petitioner,

vs.

STATE OF GEORGIA.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

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This is a reply brief filed by the petitioner in response to certain allegations of fact, the same being denied herein, contained in the brief filed by the respondent State of Georgia, and in response to and denial of certain claims made by the respondent pertaining to the existence of certain procedural rules governing the raising of fundamental constitutional rights in criminal cases. This reply brief is divided into two parts designated as follows:

I

It is alleged and asserted herein by the petitioner, that certain affirmative misstatements of fact and incorrect and untrue assumptions of fact are contained in the brief filed on behalf of the State of Georgia. They are dealt with herein in the order of their appearance according to page numbers on which they appear.

1(a)

This Court's attention is directed to page 3 of the brief filed by the respondent State of Georgia, the specific part being:

> "At both the first and second trials, the State's testimony consisted of positive identification of the petitioner by the victim, *a confession* by the petitioner. . . ."

A casual reading of the transcript of the testimony will show that if the strongest construction is placed upon the statements allegedly made by the petitioner, they could only be *incriminatory statements* and could not constitute "a confession." The word confession has a certain specific legal content, and it is elemental that a statement made by one charged with a crime in order to be a confession must not contain any exculpatory contentions, and the statement must embrace a free and voluntary admission of each element of the crime. What the State calls "confession" does not measure up to the legal requirement. The crime of rape must be "without the consent of the female"—this petitioner has at no time admitted sex relations with the prosecutrix without her consent. In his statements he said *she did not resist.*

1(b)

The State of Georgia, on page 4 of its brief, uses the following language:

> "In addition, at the first trial petitioner asserted the defense of insanity, and his own medical witness related the details of a *confession* made to him by petitioner."

The medical witness referred to is Dr. J. M. Anderson, and the testimony of Dr. Anderson at the petitioner's first trial, among other things, was:

> "I asked him (the petitioner) if she (the prosecutrix) offered any resistance to him and he said she did not."

It is respectfully submitted that, while the matters contained on pages 3 and 4 of the brief are not germane to any of the issues raised, and go far beyond the range of applicable argument on the legal and constitutional questions presented for determination, the bland characterization of statements made by this petitioner as "confessions" should not be permitted to remain on the record unchallenged, undisputed and undenied.

1(c)

This Court's attention is directed to page 5 of the brief of the respondent State of Georgia, the specific portion being set out as follows:

> "Both the allegations of the *two* motions to quash (R-1, 18) as well as the *evidence* (R-4, 14) *relied upon in support thereof* disclose that the petitioner was basing his claim of denial of constitutional rights on the type of proof first fully recognized in Neal v Delaware and later followed with unerring zeal."

The statement that the petitioner relied *upon evidence* on this motion challenging the array of petit jurors put upon him at his second trial on June 24, 1954, is untrue and not based upon any fact inside or outside the record. There is nothing in or out of the record which would even justify such an opinion or conclusion.

The very gist of this appeal is that the petitioner in a timely motion prior to pleading to the merits of an indict-

ment charging him with a capital felony, made a motion to quash and set aside the venire and panel of petit jurors that was put upon him on June 24, 1954, from which qualified members of the Negro race, by a scheme, device and plan, knowingly and intentionally pursued by the officials of the jurisdiction, had been eliminated systematically and arbitrarily (R-18, 23), and that after so pleading, the motion was dismissed on demurrer. No evidence was permitted. The question of whether the petitioner's evidence was sufficient to prove the allegations of fact are not before this Court, for the simple reason that there was no evidence. The petitioner contends that he was denied due process of law and equal protection of law in violation of the 14th Amendment, because he was prevented by the dismissal of his motion on demurrer, from submitting evidence to prove that a fundamental requisite under the United States Constitution requiring that he have "equal protection of the law" in the selection of trial jurors, was denied him.

The assertion that "the evidence relied on in support thereof" is an untrue statement. The facts are that the petitioner had subpoenaed fifty-three (53) witnesses to prove the allegations in his petition, and that the subpoenas were issued by the Clerk of the Superior Court of Cobb County ten (10) days prior to the petitioner's second trial. The ruling of the Court prevented the petitioner from examining these witnesses. The petitioner would have, if he had been permitted to place in the record any proof in support of his allegations, relied only in part upon what the young writer of the brief for the State of Georgia is pleased to call "the classic type proof of the Neal case." The petitioner was prepared, however, to go much, much further into proof and to show the type of "scheme and device purposely and systematically practiced by the officials of the County" (R-22, 32-33) who eliminated Negroes from

the venire and panels of trial jurors that were put upon the petitioner on June 22, 1954 and which "scheme and device" was used to limit the number of Negroes whose names were in the jury boxes to six—three of whom were eighty-two (82) years of age, sick, deaf and physically debilitated, one of whom did not reside in the County and two of whom were sixty-two (62) years old. The petitioner was prepared to prove by the fifty-three witnesses the elaborate details of the scheme and device by which the selection of juries in the jurisdiction was manipulated in violation of the equal protection clause of the 14th Amendment. The ruling of the Court, which constitutes the very basis of this appeal, prevented this petitioner from submitting evidence in support of his allegations. The evidence cited by the respondent State of Georgia (R. 4, 14) does not relate to proof on the petitioner's challenge to the array of petit (trial) jurors put upon him at his second trial on June 22, 1954, but it relates exclusively and solely to the evidence submitted to the Court in support of his motion to quash the indictment when the same was heard on October 30, 1953, at the time of the first trial of the petitioner. As to that evidence, the Supreme Court of Georgia, in its decision of reversal in 210 Georgia at pages 78, decided on May 11, 1954, did not consider the same, but ruled that the petitioner's motion was too late after indictment, and that it was incumbent upon this petitioner, with or without counsel, to raise his objection *prior* to *indictment*. That ruling is being challenged by the petitioner in this appeal, and the evidence was placed in the record to emphasize the fact that an adjudication upon the sufficiency of that evidence, even if the State Supreme Court had considered it, which it did not, as it applied to the motion to quash the indictment, which was returned on October 23, 1953, and heard on October 30, 1953, could not have constituted sufficient basis to dismiss petitioner's motion challenging the array

of petit jurors put upon him at his second trial on June 22, 1954, on the grounds of *res adjudicata*. The petitioner disputes, denies and condemns any statement or implication; if such is legitimately gathered from the respondent's brief, that he relied *upon proof* in support of his motion challenging the array of petit jurors put upon him on June 22, 1954, and asserts upon the contrary, that one of the major premises of his appeal is based upon the fact that the Court by its ruling prevented the presentation of *any* evidence to support the allegations of fact contained in his motion.

1(d)

The Court's attention is next directed to footnote 8 appearing on page 11, of the brief of the respondent State, set out as follows:

> "The records of court show that since 1952, Negroes have frequently served on petit juries, and several times on the grand jury. In addition, several more were called for grand jury service but were excused on their own request. At one trial during this year, three Negroes served on one jury trying a case."

If the above quoted footnote is an attempt to now dispute by facts any of the allegations contained in the petitioner's motion challenging the array of trial jurors put upon him on June 22, 1954, at his second trial; the same is improperly inserted into the State's brief, and this Court, no doubt, will not consider the same. The statement, however, is interesting and replete with meaningful content if analyzed and placed in proper context. No Negro has served on a grand jury; as far back "as the memory of man runneth not to the contrary", in the jurisdiction where the petitioner was indicted on October 23, 1953.

The fact that three Negroes who are 84 years old in 1955

were selected by the Jury Commissioners from the yellow sheets in the Tax Collector's office on which Negro tax returns are maintained, to have their names in the grand and petit jury boxes, at least, raises questions as to deliberate and conscious manipulation of a scheme and device to limit the potential Negro jurors, and to flagrantly violate the spirit of the "equal protection clause." It taxes the credulity of any person to believe that a bona fide effort to comply with the constitutional requirement was made by the Jury Commission. The fact that four Negroes out of the five who could legally serve whose names appeared in a jury box containing 2,500 names of white grand and petit jurors were drawn and summoned during the week of October 26, 1953, the week in which the petitioner was first tried (page 9 of State's brief), is significant, in view of the fact that this petitioner was arrested late Tuesday, October 20, 1953, indicted Friday morning, October 23, 1953, and attorneys appointed on Saturday, October 24, 1953. Note the allegations of the motion to quash the indictment (R-2), particularly the allegations of paragraphs 6 and 9. Any one familiar with the activities around and the intelligence system of a rural court house would be rather naive to conclude that the two 82-year-old jurors and the two 62-year-old jurors were summoned in the normal routine manner.

The facts as set out in the footnote, however, should not be considered, if for no other reason, because in footnote 6 on page 10 of the State's brief, it is admitted that the lists were resided in October, 1954, four months after the Court denied the petitioner the right to show by evidence that as to the *venire and panels of petit jurors put upon him on June 22, 1954*, qualified Negroes had been arbitrarily and systematically excluded from the panels because of their race and color as the result of a deliberate

scheme and device practiced by the officials of the jurisdiction.

The facts, cited in the said footnotes 6 and 8, if true, reveal the consciousness on the part of the officials who choose names of persons for placement in the jury box and those who select the venires and panels of jurors that, as to this petitioner, the boxes existed in violation of the "due process clause" on October 23, 1953, and on June 22, 1954. What has been done in the jurisdiction since October 1954, when it was decided by the officials that further revision should be made, would hardly be sufficient to justify permitting the violation of this petitioner's constitutional rights to go unvindicated.

Whether there is or is not a genuine bona fide compliance with the constitutional mandate in Cobb County at this time will possibly arise, if this case is remanded for another trial. Possibly such evidence as the State alludes to in footnotes 6 and 8 will become admissible and be evaluated and weighed in the light of the evidence submitted by this petitioner upon a future motion filed by him. At least, the petitioner would in such an eventuality be permitted to introduce evidence and cross-examine the Jury Commissioners along the lines suggested in the *Cassell* case, *supra*. At this point, he has not been able to do this. This appeal, in part, hinges around the fact that his efforts to prove by evidence the deprivation of a fundamental constitutional right have, by various means, been denied him. The question of weighing and evaluating evidence is not before the Court. The motion challenging the array of petit jurors was dismissed on motion. The question is: Is the pleading sufficient to withstand a demurrer? Assuming, and it must be assumed, that the allegations of the petitioner's motion challenging the array of petit jurors are true, did he timely and adequately raise the depriva-

tion of a fundamental constitutional right? If so, the Court should not have dismissed the motion filed on June 22, 1954, before hearing or allowing any evidence to be introduced by the petitioner.

1(e)

The attention of this Court is directed to the lower part of page 24 of the brief filed by the respondent State of Georgia, set out as follows:

> "Of course, where a defendant did not have the opportunity of challenging the grand jury, as where it was empanelled and sworn prior to the commission of the offense, the objection may be raised by plea in abatement or other procedure provided by the State. *Carter* v. *Texas* (1900) 177 U.S. 442, 44 L. Ed. 839, 20 S. Ct. 687."

This petitioner denies and disputes the implication that might be drawn from the above statement. Petitioner shows that the grand jury that indicted the petitioner had been drawn, empanelled and sworn prior to the date on which the alleged offense occurred. Petitioner shows that *he did not have an opportunity to challenge the grand jury* at any time prior to October 30, 1953, the date on which he did challenge the grand jury which indicted him. He shows further that the records of the Superior Court of Cobb County, Georgia, in Book ZZ thereof, shows that the names of the grand jurors which indicted him were drawn and their names recorded on October 1, 1953. The grand jurors that indicted this petitioner were empanelled and sworn on October 12, 1953, eight days before the alleged offense for which the petitioner was indicted occurred. This fact is recorded in the Minute Book of Cobb Superior Court, Book ZZ, at page 209.

The grand jury which indicted this petitioner was dismissed on October 19, 1953, and this fact is recorded in Minute Book ZZ, hereinbefore referred to.

On October 21, 1953, the Judge of the Superior Court of Cobb County ordered the grand jury which had been empanelled and sworn on October 12, 1953, reconvened, and recited in his order that certain persons were in the Jail of Cobb County against whom indictment would be presented. The petitioner, Amos Reece, was *not named* as one of those persons. This order is recorded in Minute Book ZZ, page 259, of the Cobb County Superior Court Records.

In accordance with the aforesaid order, the grand jury reconvened on October 23, 1953, and the petitioner was indicted for a capital felony. This fact is recorded in Minute Book ZZ, *supra*.

The grand jury which indicted the petitioner was selected on October 1, 1953; it was empanelled and sworn on October 12, 1953; it was ordered reconvened on October 21, 1953; it reconvened and indicted the petitioner on October 23, 1953.

The alleged offense was committed on October 20, 1953; the petitioner was lodged in the jail on October 20, 1953. He remained therein, without counsel, until October 24, 1953.

If the petitioner were as wise and as learned as the State in its brief unrealistically assumes that he must be, he had a right to rely upon the order reconvening the grand jury, which did not name him as one of those against whom an indictment would be presented. If he had been assigned counsel during the two-day interval, the counsel could have relied upon the order reconvening the grand jury of the County. However, the petitioner bases his appeal, in so far as it applied to the ruling of the Court on the motion to quash the indictment that was filed and determined in

the trial court on October 30, 1953, on the proposition that under the Constitution of the United States, where one claims that a fundamental requisite arising under the 14th Amendment is lacking in the mode and method of procedure whereby he is about to be tried for a capital felony, that in a state court, his *plea must be entertained* and that he must be permitted to introduce evidence to prove that his rights under the 14th Amendment are being denied him. In this case, this illiterate Negro, of low mentality, was in jail, without a lawyer; the grand jury already had been drawn, sworn and empanelled, and within two days of the commission of the offense, he was indicted by the grand jury which was suddenly reconvened after being dismissed, and the State of Georgia says:

> "You should have challenged the Grand Jury prior to the indictment and it makes no difference whether you were represented by counsel or not; and the evidence as to discrimination against qualified members of your race in the selection of persons for jury duty in the jurisdiction where you were tried will not be weighed or evaluated because you raised the issue too late."

The demands of the "due process" clause and "equal protection" clause of the 14th Amendment are stronger than any such procedure in a state jurisdiction. State procedure, and the modes and practices pursued in State courts, must of necessity be adapted to the demands of "due process" and "equal protection" as those concepts are expounded by this Court.

II.

Certain assumptions as to the legal procedure required by Georgia practice relating to the time within which an

accused may bring a motion to quash an indictment are made in the brief filed by the State of Georgia. Certain Georgia cases are cited as authority for the legal assumptions made.

All of these assumptions and cases relate solely to that portion of the petitioner's appeal which deals with his first trial which was had on October 30, 1953, and relate to the motion to quash the indictment which was filed by this petitioner on October 30, 1953. The State in its brief does not seriously contend that it was proper to dismiss the petitioner's motion challenging the venire and panels of petit jurors which were put upon him at his second trial on June 22, 1954. However, it is contended herein that the cases cited by the State in its brief as authority that the petitioner's motion to quash the indictment was filed too late where the same was filed after the indictment, do not sustain the State's position. All of these cases are plainly distinguishable from the facts in this case. There are other cases in Georgia which have recognized that where the petitioner predicates his motion to quash an indictment upon grounds which arise under and by virtue of the "equal protection" clause of the United States Constitution, the statutory modes of procedure relating to the usual pleas where objections are made to one juror or to more than one juror upon statutory grounds are not applicable to a constitutional plea arising under the 14th Amendment. These matters are dealt with hereinafter.

The State in its brief, on pages 19, 20 and 21, cites many Georgia cases. All of the cases cited deal with the time within which a defendant in a criminal case may by a proper plea in abatement move to quash an indictment on which a specific juror was sitting who for statutory reasons was disqualified, or where there had been some administrative laxness in following the regulatory procedure required for

the empanelling and summoning of the grand jurors. None of these cases deal with a plea made by a defendant whose claim is that he was being denied "equal protection" of law and "due process" of law under the 14th Amendment.

On Page 19, the State cites the case of *Williams* v. *The State* in the 69th Ga. at page 13, headnote 5(c) and the case of *Lee* v. *The State*, 69th Ga. at page 205. A casual reading of these two cases discloses that they deal with matters of procedure wholly distinct from and unrelated to any manner raised in this petitioner's appeal. Both cases deal with statutory objections to specifically named grand jurors, and the objections were raised for the first time after conviction. The *Williams* case, *supra*, recognizes that a defendant must have some notice that his case will be considered by a specific grand jury and must have some opportunity to prepare a proper plea. (See headnote 5(c) of the *Williams* case, supra.)

The state relies heavily upon the case of *Parris* v. *The State*, 125 Ga. at page 777. A casual reading of the *Parris* case reveals that the objection therein was to one grand juror, and his objection was one which the Court defined as "proper defectum." The *Parris* case, *supra*, incorporated and cites most of the cases referred to in the State's brief.

It is also significant that in headnote 3 of the *Parris* case, *supra*, the Supreme Court of Georgia used this language: "Unless it appears that he did not have full notice or opportunity to make the challenge at the time (before indictment) . . ." Applying this principle to the petitioner's plea to quash the indictment because a fundamental requisite arising under the Constitution of the United States was lacking to the facts which obtained on October 30, 1953, can it be said that this petitioner, even if this rule of procedure

is applicable in the petitioner's case, had full notice and opportunity to make his challenge prior to indictment. The facts are that the petitioner was arrested on the evening of the 20th of October, 1953, lodged in the common jail and was without an attorney. On October 21, 1953, the grand jury which had been empanelled and sworn on October 12, 1953, and dismissed on October 19, 1953, was reassembled and recalled for October 23, 1953, and the petitioner was indicted on October 23, 1953. In the Judge's order reassembling the grand jury, certain persons were named whose cases would be considered by the grand jury, but the petitioner's name was not included therein. It is urged herein that applying the rulings of the Supreme Court of Georgia to the facts in the petitioner's case and eliminating the broader aspects of the constitutional problem arising under his plea, his motion to quash was timely brought, unless all of these previous cases cited *supra* were overruled in the case of *Reece* v. *The State*, 210 Ga. page 578, decided on May 11, 1954.

The contention of the petitioner, as this appeal relates to the motion to quash the indictment, is that the Supreme Court of Georgia, in its ruling in the *Reece* case, *supra*, denied the petitioner "due process" of law and "equal protection" of law under the 14th Amendment of the Federal Constitution, because the effect of that ruling was to deprive him of showing that qualified members of his race had been discriminated against in the composition of the jury list from which the grand jury that indicted him was drawn, and that the effect of that ruling, if permitted to stand, would be tantemount to permitting a state by a sophisticated method of procedure to deny a defendant accused of a capital felony the right to the aid and benefit of counsel as that right is embraced within the "due process" clause of the 14th Amendment.

This petitioner contends that he did at the proper time by a pleading which was not demurrable assert the deprivation of a fundamental constitutional right arising under the "equal protection" clause and the "due process" clause of the 14th Amendment of the Constitution of the United States. He further contends that any State procedural device which would deprive him of submitting evidence to prove the deprivation and prevent him from making a record in the court below is itself contrary to the "due process" clause of the 14th Amendment. This petitioner contends that any ruling, whether made by the trial court or by the Supreme Court of Georgia, that it was incumbent upon him to know all of the niceties of Georgia procedure and to proceed within twenty-eight hours of his arrest to prepare a written motion without the aid of counsel, is contrary to the "due process" clause of the 14th Amendment of the United States Constitution, because the effect of such ruling is to deprive him of the benefit and aid of counsel which is a right embraced within the "due process" clause. This petitioner further contends that the 14th Amendment is paramount to any state rule of procedure, whether the same be embodied in statute or by judicial opinion. For the law to be otherwise would render the 14th Amendment valueless in so far as protecting personal liberty.

In several of the cases cited by the State in its brief, the term "*propter defectum*" is used. It is insisted by this petitioner that the terms "*propter defectum*" and "*propter affectum*" cannot be properly applied to a motion to quash an indictment or to a motion to set aside the venire and panels of trial jurors where the grounds of the motion arise under and by virtue of the 14th Amendment of the United States Constitution. The concepts which gave rise to the "equal protection" clause have no historical or logical

connection with the common law modes of procedure or the characterization of those modes of procedure which dealt with the methods by which an individual juror's competency to serve could be tested under statutory or customary grounds. These descriptive terms applied to such customary or statutory modes of procedure arose in England long before the emergence of the historical reasons which gave birth to the 14th Amendment. But, if the predilection of the legal mind for using ancient vessels in which to carry new concepts must be fused, and if in order to tickle the ego of the legal mind, we must continue to use these terms in situations of this kind, then we can turn to the *Parris* case, *supra*, and to the case of *Hawkins* v. *The State* (1952), 86 Ga. pages 872 and 874; *Avery* v. *The State*, 209 Ga. 116-117.

The *Hawkins* case, *supra*, held:

> "Where after the return of the indictment, the defendant seeks to object to *one of the jurors propter defectum*, it is incumbent upon him to show that he did not have the opportunity to raise the objection prior to the indictment."

In the *Avery* case, *supra*, a case which this Court later reversed, in reviewing the facts of the case, the Supreme Court of Georgia stated:

> "Avery was arrested on October 29, 1950, for the offense of rape in Walker County, and was committed to jail. At the February, 1951, term of the Walker Superior Court *he was informed by the Solicitor General of the Judicial Circuit in Walker County* that an indictment charging him with rape would be presented for grand jury action *during that term of court*."

An attorney was thereupon appointed for Avery, and Avery, prior to the indictment and after receiving affirma-

tive notice from the Solicitor General that an indictment would be presented, filed a written challenge to the array of grand jurors. The Avery case recognized and adhered to the customary procedure in Georgia where one is charged with a capital felony, to notify him that an indictment would be presented against him at a specific term of the grand jury.

The case of *Crumb* v. *The State*, 205 Ga. page 547, is a case where Crumb was indicted by a grand jury for a misdemeanour, where Crumb was on bond, but yet he filed prior to being placed on trial a motion to quash the indictment and a challenge to the array of petit jurors put upon him. The identical procedure used in the *Crumb* case, *supra*, was used in this petitioner's case at his second trial on June 22, 1954.

Other cases arising in Georgia in which the writer of this brief represented the defendants and where a claim was made prior to going to trial that a fundamental requisite arising under the Constitution of the United States was lacking in the method by which the grand jury and petit jury was selected are *Lorenza Cofield* v. *The State* in the Superior Court of Troup County and *Isaiah Grimes* v. *The State* in the Superior Court of Walton County. Both of these cases were murder cases. These cases did not go to the Supreme Court of Georgia, but the trial court in both cases recognized the right of the defendants to proceed to quash the indictment and to set aside the venire of trial jurors in one and the same proceeding after the indictment had been returned.

In the *Cofield* case, after the motion to quash had been filed, and while the evidence was being submitted to the court to sustain the allegations, Cofield withdrew his motion and pleaded guilty to manslaughter.

In the *Grimes* case, the Trial Judge abated the action

and the Jury Commissioners of Walton County, Georgia, were reassembled for the purpose of reestablishing the grand and petit jury lists of the County.

The attention of this Court is now directed to pages 29 through 32 of the brief filed by the State of Georgia in which they characterize as "novel" the contention of the petitioner that he should have been permitted to prove as one of the various elements in the pattern of discrimination against members of his race in the selection of jurors in the jurisdiction where he was tried, the fact that there were at least one hundred (100) members of his race who from every viewpoint were qualified to act as jury commissioners of the county, but that they had been deliberately, systematically and purposely prevented from serving as members of the jury commission because of their race and color.

The facts, as meager as they are, upon this particular feature of this case, demonstrate that the presence of qualified Negroes upon the jury commissions in the jurisdiction where Negroes constitute a large segment of the population will obtain an objective compliance with the spirit of the constitutional requirement. The mores of the people and the patterns of thought in the South will prevent any objective selection of members of the Negro race for participation in the administration of justice as jurors and grand jurors so long as qualified members of the Negro race are excluded from membership on the jury commissions. The quotation of isolated statements torn out of context from judicial decisions is not an effective means of meeting and rebutting this contention. An attempt to equate an all-white jury commission in the rural South to the status of this Court does not comport with reality.

In Georgia, jurors are selected from the persons meeting

the legal qualifications whose names appear on the tax digests of the county. In this particular jurisdiction, the names of all the Negro taxpayers are maintained in separate books marked "Negro" and maintained on yellow buff paper in order to segregate the Negro taxpayers from the white taxpayers. An all-white jury commission, as a matter of fact, will be familiar with the white persons in the County who would make the best jurors. They would not be familiar with the Negro persons. An all-white jury commission would select from the white pages of the tax digest the names of white persons to be placed in the jury boxes of the county and then on reflection, and knowing that this Court had ruled that in a jurisdiction where Negroes comprise a distinct racial minority, it would violate "equal protection" of the law to discriminate against qualified Negro persons because of their race and color in the selection of names to be placed in the jury boxes, would then turn to that portion of the tax digest containing the yellow sheets and pick a token number of members of the Negro race and put them in the jury boxes. In order to make the matter of discrimination more elusive as a matter of proof, they would pick the names of Negro persons whom they knew to be aged and infirm or those whom they knew to be engaged in occupations that would prevent them from serving. The facts in this case show that that is exactly what happened. If we are realistic about it, we can easily see that the presence of one or two qualified Negroes on such jury commissions would eliminate the possibility of the conscious selection of an infinitesimal number of Negro names to be placed in the jury boxes of a particular jurisdiction. Qualified Negro member or members of a jury commission would know the members of their race who were competent and qualified to act as jurors, and they would know those who were aged, sick

and infirm and those who were engaged in occupations that would prevent them from serving.

A member of a grand jury in Georgia functions in a capacity that makes him during the period of his service a participant on the ground level not only in the administration of justice, but also in the administration of local government. The operations of the various governmental agencies of the municipalities and the agencies of the county come under the surveillance of the grand jurors. In many counties, they select members of the school board and perform many functions other than the routine return of indictments presented to them by the solicitor general. The presence of members of the Negro race on jury commissions would insure an objective compliance with the constitutional mandate and would end the sophisticated evasions that are now practiced. This is simple logic, but it is a realistic approach.

Conclusion

It is respectfully urged upon the Court that the case against this petitioner be remanded to the court below with proper instructions.

Respectfully submitted,

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